

Date Issued: May 9, 1983 (AGO 83-18)

Requested by: Glenn Dill, Kenmare City Attorney

- QUESTION PRESENTED -

Whether real property owned by a railroad and leased to a municipality and on which a grain elevator is constructed is a "project" within section 40-57-02 of the North Dakota Century Code.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that real property owned by a railroad and leased to a municipality and on which a grain elevator is constructed is a "project" within section 40-57-02, N.D.C.C.

- ANALYSIS -

Section 40-57-02, N.D.C.C., defines the term "project" as used in chapter 40-57, N.D.C.C., the Municipal Industrial Development Act of 1955, in part as follows:

As used in this chapter, unless a different meaning clearly appears from the context, . . . the term "project" shall mean any real property, buildings, and improvements on real property or the buildings thereon . . . which is used or useful in connection with a revenue-producing enterprise . . . engaged or to be engaged in:

* * *

2. Storing, warehousing, distributing, or selling any products of agriculture . . .

* * *

Under this definition, a grain elevator and the real property upon which it is located would qualify as a project within chapter 40-57, N.D.C.C.

The question of whether real property which is leased to a municipality may be used for a project is answered by section 40-57-03(1), N.D.C.C., which provides as follows:

Any municipality, in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

1. Acquire whether by purchase, lease, or gift, from any source whatsoever, any real property, buildings, improvements on real property or buildings, . . . and to construct, reconstruct, improve, better, or extend to real property, buildings, and improvements on

real property and buildings of any project which shall be located within this state, provided that the property acquired for the project shall be located wholly within the boundaries of the municipality acquiring it unless a contract or agreement between that municipality and any other municipality in which part or all of the property is located is entered into as authorized by subsection 8. . . . (Emphasis added).

This section clearly allows a municipality to acquire real property for a project by means of a lease from any source, which would include a railroad.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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